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February 16, 2007

Via E-Filing

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, DC 20423

RE: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and
Merger -- Southern Pacific Railroad Corporation, et al.

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is the Petition of Union
Pacific Railroad Company for Reformation of Agreement (UP/SP 399).

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "William G. Barr".

Enclosures

cc: Parties on Attached List

William G. Barr
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EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL, CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

PETITION OF
UNION PACIFIC RAILROAD COMPANY
FOR REFORMATION OF AGREEMENT

(Contains Color Images)

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**PETITION OF
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I. INTRODUCTION

Union Pacific Railroad Company ("UP") hereby petitions the Surface Transportation Board ("Board") for reformation of the Restated and Amended BNSF Settlement Agreement jointly submitted by UP and BNSF to the Board on March 1, 2002 (the "Restated and Amended Settlement Agreement").¹ Specifically, UP seeks to

¹ Acronyms used herein are the same as those in Appendix B of Decision No. 44 of the Board in this Finance Docket. The following original applicants have been merged into UPRR: MPRR (on January 1, 1997); DRGW and SPCSL (on June 30, 1997); SSW (on September 30, 1997); and SPT (on February 1, 1998). For simplicity, and in light of the fact that SPT has merged with UPRR and no longer has any separate existence, we generally refer to the combined UP/SP rail system herein as "UP."

reform Section 1(g) of the Restated and Amended Settlement Agreement to reflect the intent of the parties to retain certain restrictions on BNSF's use of trackage between Stege (Richmond), California, and Sacramento, California, and between Sacramento and Stockton, California, over which BNSF operates as a trackage rights tenant. These trackage rights were designed and tailored to allow BNSF to compete with the combined UP/SP only (1) for transcontinental intermodal and automotive traffic moving over the Central Corridor route between Denver, Colorado, and Oakland, California, via Salt Lake City, Utah (the "Central Corridor Route") and (2) for intermodal traffic moving over the so-called "I-5" rail route between Seattle, Washington, and California generally paralleling Interstate Highway 5 (the "I-5 Route").

A mistake by the parties in drafting the Restated and Amended Settlement Agreement inadvertently removed restrictions on BNSF's use of those intermodal trackage rights, impliedly allowing intermodal trains that do not operate over the Central Corridor Route or over the I-5 Route to use the UP segments via Sacramento. Reformation of the Restated and Amended Settlement Agreement is essential to prevent BNSF's trains from continuing to delay 44 daily passenger trains and from interfering with UP's ability to compete with BNSF. Unless corrected, an error will affect the relative competitive positions of the parties and their customers, as well as the dozens of passenger trains that operate between Oakland and Sacramento.

UP requests that the Board give this Petition expedited consideration because of the irreparable harm to UP, its customers, and passenger train operations from the operation of unauthorized BNSF trackage rights trains.

II. BACKGROUND

A. Pertinent UP and BNSF Lines

Attached as Exhibit A is a map that depicts UP's and BNSF's lines in the San Francisco Bay, Sacramento, and Stockton areas, including UP's Martinez Subdivision (the "Cal-P Line") between Sacramento and Oakland. A map that more generally depicts UP's and BNSF's lines in California and Nevada is attached as Exhibit B.

BNSF operates its own single-track, CTC-equipped main line between Stockton and Richmond. This route is direct and 50 miles shorter than operating via Sacramento on UP.

The disputed UP route between Richmond and Stockton that BNSF is now using forms two sides of a triangle, with Sacramento at the top. BNSF runs on the Cal-P Line between Richmond and Sacramento, then makes a 90% turn at Elvas (a point in Sacramento) to operate between Sacramento and Fresno. This route is not only 50 miles longer than BNSF's route between Stockton and Richmond, but also consumes many extra hours. UP contends that BNSF is operating unauthorized trains over this circuitous route and should use its own direct line.

B. The Settlement Agreement

BNSF obtained the right to operate trackage rights trains over the Cal-P Line in an agreement entered into by BNSF and UP on September 25, 1995 (the "Original Settlement Agreement"). These rights addressed alleged competitive issues raised by the proposed merger of UP and SP in the Central Corridor via Utah and also created a new competitive route between the Pacific Northwest and California. (BNSF had previously received the right to operate over the short segment of the Cal-P Line between Oakland and Stege (Richmond), and BNSF's operation over that short

segment is not disputed in this proceeding.) UP and SP asked the Board to impose the terms of that agreement as a condition to approval of the merger. The Board adopted the Original Settlement Agreement in its approval of the UP/SP merger in Decision No. 44 in this Finance Docket (served August 12, 1996). Pursuant to that decision, UP acquired control of SP on September 11, 1996.

The Original Settlement Agreement provided that BNSF could use the Cal-P Line only for trains operating over the I-5 Route and the Central Corridor Route. Section 1(g) provided (in pertinent part) that BNSF's Cal-P rights were restricted to Central Corridor and I-5 Route trains:

"On SP's line between Weso and Oakland via the 'Cal-P,' BNSF shall be entitled to move only (i) intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one manifest train/day in each direction. Intermodal trains are comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration." (Emphasis added.)²

The parties subsequently modified the Original Settlement Agreement by a Supplemental Agreement dated November 18, 1995 (the "First Supplement") and a Second Supplemental Agreement dated June 27, 1996 (the "Second Supplement"). Among other things, the Second Supplement amended Section 1(a) of the Original Settlement Agreement to give BNSF trackage rights over a segment of UP's Fresno Subdivision between Elvas (Elvas Interlocking in Sacramento) and Stockton (the "Elvas-Stockton Line"):

² Weso is a station five miles east of Winnemucca, Nevada, where the former SP (Donner Pass line) and UP (WP's Feather River line) lines join. Keddie is the station on UP's Feather River main line (Canyon Subdivision) where BNSF's line north to the Pacific Northwest diverges from UP's line. For purposes of this Petition (1) the term "Intermodal Train" refers to trains comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration, (2) the term "Central Corridor Intermodal Trains" refers to Intermodal Trains moving over the Central Corridor Route (between Oakland and Weso and points east), and (3) the term "I-5 Intermodal Trains" refers to Intermodal Trains moving over the I-5 Route (between Oakland and Keddie and points north).

" . . . (subject to traffic restrictions as set forth in Section 1g and also excluding any trains moving over the line between Bieber and Keddie, CA, to be purchased by BNSF pursuant to Section 2a of this Agreement)."

BNSF obtained rights over the Elvas-Stockton Line because BNSF was unable to construct a connection at another location in Sacramento that would have permitted it to connect UP's Donner Pass line between Sacramento and Weso with UP's (former WP) Feather River line between Sacramento and Stockton over which BNSF also received trackage rights under the Original Settlement Agreement. Accordingly, these new trackage rights over the Elvas-Stockton Line were, as to Intermodal Trains, also limited to Central Corridor and I-5 Trains using BNSF trackage rights from the Original Settlement Agreement. Otherwise, neither the First Supplement nor the Second Supplement affects the issue in this proceeding.

As of June 1, 1996, BNSF and UP entered into the Denver, Colorado to Stockton and San Jose, California Trackage Rights Agreement (the "Denver – Stockton/San Jose Agreement") to implement Section 1(a) of the Original Settlement Agreement. The Denver – Stockton/San Jose Agreement contains language in Section 2(b)(i) virtually identical to the language of Section 1(g) of the Original Settlement Agreement quoted above. Section 2(b)(i) reads in pertinent part as follows:

"(i) On the SPT's portion of the Joint Trackage between Weso and Oakland via the 'Cal-P.' User [BNSF] shall be entitled to move only (i) Intermodal Trains (as defined below) moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one Manifest Train (as defined below) daily in each direction." (Emphasis added.)

In agreeing to both Section 1(g) of the Original Settlement Agreement and Section 2(b)(ii) of the Denver – Stockton/San Jose Agreement, the parties intended that BNSF's trackage rights over the Cal-P Line could be used, in the case of Intermodal Trains, only for movements north and south over the I-5 Route via Keddie (the "I-5

Restriction") or over the Central Corridor Route east of Weso (the "Central Corridor Restriction"). Both sections reflected the parties' understanding that the BNSF trackage rights Intermodal Trains to/from Oakland were limited to Central Corridor Intermodal Trains and I-5 Intermodal Trains.

BNSF and UP subsequently decided to amend and restate the Original Settlement Agreement to clarify a number of issues that had arisen in the course of implementing the trackage rights it granted, to incorporate the conditions imposed by the Board on the UP/SP merger (including their agreement with the Chemical Manufacturers Association, as modified by the Board), and to adopt certain agreements they had reached relating to those conditions and other related matters. The I-5 and Central Corridor Restrictions were not among the matters requiring revision. To this end, BNSF and UP agreed upon the Restated and Amended Settlement Agreement, and, on March 1, 2002, they jointly submitted it to the Board. Section 1(g) of the Original Settlement Agreement was modified by the Restated and Amended Settlement Agreement as discussed below.

C. The Issue

This Petition is necessitated by BNSF's operation of Intermodal Trains over the Cal-P and the Elvas-Stockton Lines via Sacramento (see Exhibit A) that are neither I-5 Intermodal Trains nor Central Corridor Intermodal Trains. Until last week, BNSF also operated so-called "bare table" (i.e., empty) trains that repositioned empty intermodal equipment from Oakland to the Los Angeles area. These bare table operations are expressly prohibited under the Restated and Amended Settlement Agreement, and BNSF has now discontinued them. The majority of the Intermodal Trains that BNSF now operates over the Cal-P and Elvas-Stockton Lines originate or terminate in the

Oakland area and terminate or originate at points east of Barstow, California, using BNSF's route over the Southern Corridor (the "Southern Transcon Route"). In recent days, BNSF has reduced the number of these trains via Sacramento. BNSF declines, however, to promise that it will not operate such trains whenever it wishes.

In essence, BNSF has stitched together several distinct trackage rights operations in violation of the parties' understanding - - as reflected in the Original Settlement Agreement and the Second Supplement and as intended, but unfortunately not currently reflected, in the Restated and Amended Settlement Agreement. Their intent was that the Northern California trackage rights would be used only for the movement of Central Corridor Intermodal Trains and I-5 Intermodal Trains. The parties never intended that BNSF could use those trackage rights to operate BNSF Intermodal Trains either (1) between Oakland and the Los Angeles Basin or (2) for transcontinental movements over the Southern Transcon Route. BNSF had its own routes for these movements before the UP/SP merger, and the merger did not affect those routes. Because of the parties' mistake in revising Section 1(g) of the Restated and Amended Settlement Agreement, the agreement does not reflect the parties' intent that the Central Corridor Restriction and the I-5 Restriction would continue to apply to the Cal-P Line and Elvas-Stockton Line trackage rights. The Board should reform or modify the agreement to clearly state those Restrictions as provided in the Original Settlement Agreement.³

³ The Restated and Amended Settlement Agreement, like the Denver - Stockton/San Jose Trackage Rights Agreement, provides for arbitration of disputes. However, arbitration is not the means by which the issue in this proceeding can be resolved. Here, UP does not seek clarification of an agreement provision to resolve a dispute arising from the parties' differing interpretations of its meaning. Rather, UP seeks the reformation, or modification, of a provision of the Restated and Amended Agreement so that it accurately states the parties' intent that the Central Corridor and I-5 Restrictions continue in place. Since the Board approved the Original Settlement Agreement, including the Central Corridor and I-5 Restrictions, the Board, rather than an arbitrator, must consider UP's request for the

III. BNSF OPERATION OF NON-I-5 AND NON-CENTRAL CORRIDOR INTERMODAL TRAINS ON THE CAL-P LINE

A. The Impact on Passenger Train Operations

The Verified Statements of Mr. Thomas F. Jacobi, UP's Vice President of Operations for its Western Region, and of Mr. Eugene Skoropowski, Managing Director of the Capitol Corridor Joint Powers Authority ("Capitol Corridor"), are attached as Exhibits C and D, respectively, in support of this Petition. As Mr. Jacobi and Mr. Skoropowski explain, the Cal-P Line is a critical freight and passenger corridor for UP and the State of California. It is one of the most heavily used passenger train lines in the United States. BNSF's operation of Intermodal Trains on the Cal-P Line that are neither Central Corridor Intermodal Trains nor I-5 Intermodal Trains has congested that line, with resulting adverse effects for the traveling public as well as for UP and its customers.

The number of commuter and Amtrak trains operating over the Cal-P Line is significant and increasing. Prior to August 28, 2006, a total of 28 passenger trains

reformation of the Restated and Amended Settlement Agreement to correct the mistake of the parties that vitiates those important Restrictions. An arbitrator could not grant the relief we seek.

In addition, as the Board recognized in Decision No. 44 and in several decisions thereafter, the merger conditions, including the Original Settlement Agreement, were imposed to protect the public interest by preserving pre-merger competition. Customers of both railroads are entitled to have the conditions implemented in a manner that effectively preserves that competition. See Decision No. 44 at 12 n. 15 (shippers at points opened up to BNSF under the Original Settlement Agreement have rights under the Agreement); Finance Docket No. 32760, Decision No. 72 (served May 23, 1997) at 8 n. 18 ("We wish to clarify that shippers have rights under the BNSF agreement because we have imposed the terms thereof as a condition of the merger.").

The Board has previously recognized the direct role it should play in protecting and preserving the rights of customers under the Board's conditions. For instance, in declining UP's and BNSF's request that the Board adopt a "new facilities" protocol, the Board stated that it was "confident that we can resolve any controversies that are brought before us quickly." Sub-No. 21, Decision No. 10 at 13. See also Decision No. 75 at 4 ("We will continue to resolve these issues [relating to the new facilities and transload conditions] on a case-by-case basis.").

operated each day between Sacramento and Martinez - - 24 Capitol Corridor trains and four Amtrak trains. Eight additional Amtrak San Joaquin intercity trains operated between Martinez and Oakland. Beginning August 28, 2006, the number of Capitol Corridor trains increased to 32 (16 in each direction). As a result, a total of 44 passenger trains operate each day between Martinez and Oakland (Jacobi VS, pp. 3 and 4; Skoropowski VS, pp. 3 and 4).

On a typical day, between 50 and 56 freight (including BNSF trackage rights trains) and passenger trains operate on the Martinez-Oakland segment of the Cal-P Line. Keeping passenger trains on time while still maintaining reasonably efficient freight operations over the Line is a significant challenge. Since the daily maximum fluid capacity of the Cal-P Line is currently limited to between 50 and 60 total trains on that segment, the Cal-P Line often is heavily congested west of Martinez. In addition, UP's segment between Martinez and Sacramento handles 36 passenger trains daily along with UP's 14 to 16 freight trains and is already at capacity (Jacobi VS, pp. 4 and 5). As a result, delays to passenger and freight trains are inevitable (Jacobi VS, p. 5). It is UP's goal to operate at least 96% of the Capitol Corridor trains on time. Since August 2006, however, the monthly on-time percentage of Capitol Corridor trains has slipped to around 80%, and this past December it fell as low as 75% (Skoroposki VS, p. 4). In Mr. Skoropowski's opinion, the addition of unauthorized BNSF trains to the segment between Sacramento and Richmond has contributed to the deterioration in on time arrivals of the Capitol Corridor and Amtrak trains that operate over the Cal-P Line (Skoropowski VS, p. 5). Mr. Jacobi is of the same opinion (Jacobi VS, p. 6).

Mr. Skoropowski's Verified Statement describes the adverse effects on the commuter rail passengers who rely on timely, dependable service over UP's Cal-P Line.

He details the State of California's significant investment in the Cal-P Line, the Line's limited capacity, and the delays that Capitol Corridor trains have experienced (Skoropowski VS, pp. 4 and 5). Mr. Skoropowski believes that BNSF is unjustifiably benefiting from this public investment by operating the unauthorized Intermodal Trains over the Cal P-Line rather than its own shorter route between Richmond and Stockton. After describing at page 4 of his Verified Statement the significant investments by the State to expand/improve the Cal-P Line's capacity for possible service, he notes that "[a]t no time were capacity provisions envisioned or made for the now disputed service on the Cal-P Line." Mr. Skoropowski concludes by expressing serious reservations that UP will be able to meet its 96% on-time target for Capitol Corridor trains if the operation of the unauthorized BNSF trains is allowed to continue (Skoropowski VS, pp. 6 and 7).

In essence, by operating unauthorized trains over the Cal-P Line, BNSF is taking advantage of UP's and the State of California's infrastructure investments in that segment. If by doing so BNSF seeks to solve capacity constraints on its single-track line between Stege (Richmond) and Stockton by postponing, or even avoiding, necessary capital investments, it does so at the expense of taxpayers, the rail traveling public, and UP. BNSF should not be permitted to unburden its Richmond-Stockton line, which handles only eight Amtrak trains daily between Port Chicago (east of Martinez) and Stockton, by diverting unauthorized Intermodal Trains to UP's Cal-P Line.

B. The Impact on UP's Operations

As described in Mr. Jacobi's Verified Statement, BNSF historically operated its non-I-5 and non-Central Corridor Intermodal Trains between Oakland and Stockton using its own main line between Richmond and Stockton. UP understands that blocked crossings and horn noise have resulted in operating problems for BNSF in the City of

Richmond (Jacobi VS, p. 7). Perhaps for those reasons, and perhaps also due to congestion that UP has been informed exists on BNSF's Richmond-Stockton line, beginning in early 2005 BNSF began shifting non-Central Corridor and non-I-5 Intermodal Trains to UP's Cal-P Line between Stege and Sacramento (Elvas). The UP dispatchers who dispatch the Cal-P Line did not know the ultimate origin and destination of the BNSF trains presented for operation over the Line nor whether they were Central Corridor or I-5 Intermodal Trains permitted to operate on the Line. From Elvas these trains operated south to Stockton over UP's Fresno Subdivision, with ultimate destinations of either Los Angeles (typically empty repositioning movements) or to points east of Barstow over BNSF's Southern Transcon Route.

The trackage rights route on UP between Stockton and Oakland via Sacramento, which includes the Cal-P Line, is circuitous (135 miles compared to 85 miles on BNSF's own route) and takes much longer to traverse than BNSF's Richmond-Stockton line. However, BNSF apparently prefers the longer route because it permits BNSF to continuously move its trains rather than temporarily holding them in Stockton, Richmond, or Oakland, as would be required if they operated over its Richmond-Stockton segment.

The table attached as Exhibit E shows UP's best estimate⁴ of the number of (1) I-5 Intermodal Trains,⁵ (2) BNSF Southern Transcon trains, and (3) BNSF bare table trains that operated over the Cal-P Line during 2004 - 2006. It reveals a steady, if

⁴ It is impossible for UP to determine with absolute accuracy the origin/destination of all BNSF trackage rights trains operating over the Cal-P Line. However, we are confident that our analysis of the characteristics (e.g., their symbols, likely origins/destinations) of those trains allows us to determine with relative precision in Exhibit E which are I-5 Trains and which are unauthorized Intermodal Trains or bare table trains.

⁵ No Central Corridor Intermodal Trains operated over the Cal-P Line because BNSF's trackage rights route over UP between Salt Lake City and Denver cannot handle doublestack traffic due to insufficient tunnel clearances.

somewhat uneven, increase in Southern Transcon and bare table trains operating over the Cal-P Line during a period of significant decrease in the number of I-5 Intermodal Trains operating over the Line. The table does not reflect BNSF's reduced operations in recent days.

Delays to both freight trains and passenger trains became substantially worse as BNSF began running these unauthorized BNSF trains. As a direct result, UP has been required to divert UP freight trains to other, much longer UP routes to and from the San Francisco Bay area, including its highly circuitous Altamont line (Jacobi VS, p. 7).

In addition to the trains operating daily on the Cal-P Line, UP maintenance crews must keep up with repairs and replacements directly related to maintaining reliability and ride quality for the passenger trains on the Line. To accommodate a major tie replacement project on the segment between Martinez and Richmond, and to avoid conflicts with passenger trains on the Cal-P Line, UP is temporarily operating its and BNSF's freight trains over the Line only at night, after the commuter trains have ceased operating for the day. UP is uncertain whether this nighttime operation of freight trains will be continued after the completion of the tie replacement project, but this may be necessary to maintain the on-time performance of passenger trains on the Line (Jacobi VS, pp. 5 and 6).

C. The Competitive Impact on UP

The congestion on UP's Cal-P Line resulting from BNSF's operation of non-Central Corridor and non-I-5 Intermodal Trains has had and will, if allowed to persist, continue to have an adverse impact on UP's competitive capabilities and on UP's customers. This congestion restrains UP's ability to grow its traffic over the Cal-P Line and compete with BNSF's route between Stockton and Richmond. In particular, UP is

impaired in its ability to compete with BNSF for growing traffic to and from the Port of Oakland. Yet BNSF's circuitous operation of its Central Corridor Intermodal Trains via Elvas is not required to preserve competition, as BNSF has a shorter route between Stockton and Richmond.

As explained at page 8 of Mr. Jacobi's Verified Statement, it would for a number of reasons be very difficult for UP to add capacity to the Cal-P Line: the right of way is bordered by San Pablo Bay, encroaching development, wetlands, and heavy industry; the presence of two major drawbridges over navigable waterways; a lengthy causeway over a sensitive river bypass between Davis and Sacramento; and congested terminal facilities at Sacramento.

Each of UP's lines north and east out of the San Francisco Bay area is at or near capacity. UP anticipates that these capacity constraints will only increase for several reasons, particularly if the Port of Oakland pursues a proposed major expansion project. With the addition of these unauthorized Intermodal trains over the Cal-P Line, UP's current rail network will be unable to handle increased traffic flows. (Jacobi VS, p. 9.) BNSF should not be allowed to restrict UP's competitive abilities through the unauthorized use of UP's own lines.

UP understands that BNSF is contemplating the operation of a short haul shuttle on its Richmond-Stockton line. If BNSF's use of the Cal-P Line and the Elvas-Stockton line reflects a lack of capacity for the efficient operation of BNSF's existing long haul trains, BNSF's operation of this short haul shuttle would represent its pursuit, at UP's and the public's expense, of additional business that it does not have the capacity to handle.

IV. THE EVOLUTION OF THE CENTRAL CORRIDOR AND I-5 RESTRICTIONS

Section 1(g) of the Original Settlement Agreement clearly reflected the parties' agreement to impose the Central Corridor Restriction and the I-5 Restriction on BNSF's Cal-P Line trackage rights operations. It expressly limited BNSF's operation of Intermodal Trains over the Cal-P Line to Central Corridor Intermodal Trains and I-5 Intermodal Trains. The parties originally intended that certain of the Central Corridor Intermodal Trains operating over the Donner Pass line would enter and exit the former WP line at Haggin, on the north side of Sacramento. However, when it became apparent that construction of the connection required to enter and exit that former WP line would be prohibitively expensive, UP gave BNSF trackage rights over the Elvas-Stockton Line in order to facilitate the restricted Donner Pass line trackage rights in the Second Supplement. Those rights, however, required a prior or subsequent move over the Central Corridor via Donner Pass. In doing this, the parties agreed, as in the Original Settlement Agreement, that BNSF's operation of Intermodal Trains pursuant to these rights would be limited to Central Corridor Intermodal Trains. And they did not intend that the Restated and Amended Settlement Agreement would eliminate this requirement. (The Second Settlement retained the I-5 Restriction by excluding from the Elvas-Stockton Line "any trains moving over the line between Bieber and Keddle, CA to be purchased by BNSF pursuant to Section 2a of this Agreement.")

Based on clear and convincing evidence, it is apparent that the parties expected the Restated and Amended Settlement Agreement to continue the I-5 Restriction and the Central Corridor Restriction. The Central Corridor and I-5 Restrictions were inadvertently omitted by a mutual mistake of the parties when they negotiated, drafted, and entered into the Restated and Amended Settlement

Agreement. The remedy for that mistake is the reformation of the Restated and Amended Settlement Agreement at Section 1(g) to expressly include the Central Corridor and I-5 Restrictions as limitations on BNSF's trackage rights over the Cal-P and Elvas-Stockton Lines.

Attached as Exhibit F is the Joint Verified Statement of UP's J. H. Rebensdorf and Lawrence E. Wzorek, UP's lead negotiators in the BNSF/UP effort to draft and agree upon the Restated and Amended Settlement Agreement. As discussed in their Verified Statement, UP can recall no discussion or statement by either party during those extended, but sporadic, negotiations (which began in late 2000 and continued until the Restated and Amended Settlement Agreement was filed with the Board on March 1, 2002) that would reflect or evince any intent by either party to modify in any substantive respect the provisions of Section 1(g) of the Original Settlement Agreement, and certainly no intent to eliminate either the Central Corridor Restriction or the I-5 Restriction (Rebensdorf/Wzorek VS, pp. 6 and 7).

In the first written exchange between the parties on the subject, BNSF in a December 22, 2000, letter to Mr. Wzorek proposed a first draft of the Restated and Amended Settlement Agreement along with "a chart showing the principal sections which have been changed and a brief description of the modifications." Section 1(g) of this redraft retained the Central Corridor and I-5 Restrictions, rephrasing them only slightly to improve their syntax while making no change in their substance.⁶

⁶ The Central Corridor and I-5 Restrictions on Intermodal Trains in the Original Settlement Agreement permitted only "intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland . . ." Those Restrictions in the draft of the Restated and Amended Settlement Agreement proposed by BNSF permitted only "intermodal trains moving between Oakland and Weso and points east or Keddie and points north, . . ."

Significantly, the BNSF-prepared chart showing principal changes contains no reference to Section 1(g) (Rebensdorf/Wzorek VS, pp. 4 and 5).

UP proposed the version of Section 1(g) of the Restated and Amended Settlement Agreement that was ultimately accepted by the parties and jointly submitted by them to the Board in response to the BNSF-proposed revision of Section 1(g) that had retained the Central Corridor and I-5 Restrictions. Significantly, at the same time UP proposed the version adopted by the parties, it also proposed to BNSF another, alternative, version that retained the Central Corridor and I-5 Restrictions essentially in the form they were set forth in Section 1(g) of the Original Settlement Agreement, as amended by the Second Supplement. The two alternatives were mistakenly considered by UP to be interchangeable and substantively the same as Section 1(g) of the Original Settlement Agreement and the revised version of Section 1(g) proposed by BNSF (Rebensdorf/Wzorek VS, pp. 6 and 7). UP believes that BNSF also mistakenly considered the two alternatives to have the same operational restrictions. Clearly, the proposal of and ultimate use of the UP-proposed version has nullified the parties' intent that the Central Corridor and I-5 Restrictions remain in effect on the Cal-P Line and the Elvas-Stockton Line. As such, it represents a mutual mistake of the parties that should be corrected.

As Messrs. Rebensdorf and Wzorek relate in their Verified Statement, it never remotely occurred to UP that BNSF would not use its own direct route between Stockton and Richmond and would instead use a route some 50 miles longer on UP (Rebensdorf/Wzorek VS, p. 7). If at the time of the negotiations for the Restated and Amended Settlement Agreement BNSF harbored such a plan, BNSF had an obligation to disclose it. BNSF never disclosed any such intent to UP. The mistake should not

now be seized upon by BNSF to implement trackage rights operations clearly in conflict with the intent of the parties. The parties' mistake should be corrected by reforming the Restated and Amended Settlement Agreement to include the original Central Corridor Restriction (which still exists in the Denver – Stockton/San Jose Trackage Rights Agreement) and the I-5 Restriction.

V. THE REFORMATION REMEDY

Reformation of a contract is an equitable remedy to reform or rectify the contract when it fails, through fraud or mutual mistake, to express the real agreement or intention of the parties. See Black's Law Dictionary, Revised, Fourth Edition. It is "black letter" law that, subject to certain exceptions not applicable here:

"if one party at the time of the execution of a written instrument knows not only that the writing does not accurately express the intention of the other party as to the terms to be embodied therein, but knows what that intention is, the latter can have the writing reformed so that it will express that intention." (Restatement of the Law of Contracts, 1932, § 505.)

"where both parties have an identical intention as to the terms to be embodied in a proposed written conveyance, assignment, contract or discharge, and a writing executed by them is materially at variance with that intention, either party can get a decree that the writing shall be reformed so that it shall express the intention of the parties, if innocent third persons will not be unfairly affected thereby." (Restatement of the Law of Contracts, 1932, § 506.)

In addition, Section 3399 of the California Civil Code provides:

"WHEN CONTRACT MAY BE REVISED. When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value."

A 1951 California case, *Martinelli v. Gabriel*, 103 Cal.App.2d 818, which involved reformation of a deed, sets forth the relevant general principles of contract reformation.

In that case, the District Court of Appeals for California's 1st District found a mutual mistake and allowed reformation. The court stated:

"It is the law that, in the absence of fraud or knowledge on the part of the other party, there can be no relief in equity against a unilateral mistake." (citing *Miller v. Lantz*, 9 Cal.2d 544, 71 P.2d 585; *Baines v. Zuieback*, 84 Cal.App.2d 483, 191 P.2d 67). *Martinelli*, 103 Cal.App.2d at 823.

"It is also true that the burden is on the person alleging mutual mistake to establish it by clear and convincing evidence." (citing *Taff v. Atlas Assur. Co.*, 58 Cal.App.2d 696, 137 P.2d 483). "But it is equally clear that if the mistake is mutual the court has power to reform the contract to make it express the true intent of the parties." *Id.* at 823.

The court rejected an argument that reading the written description of a parcel of land in a deed (reading the contract) barred reformation:

"The fact that the party seeking relief has read the instrument and knows its contents does not prevent a court from finding that it was executed under a mistake." *Id.* at 824.

Moreover, the court allowed the admission of parol evidence:

"[i]t is well settled that, 'In an action to reform a contract, parol evidence is admissible to show that the writing through mistake does not express the intention of the parties, and does not contain the real contract.'" *Id.* at 825.

In another California case where the plaintiff sought to reform a deed that conveyed more property than the parties had bargained for, the court held:

"It is not important to determine whether it was a mutual mistake or a mistake of plaintiff alone, known or suspected by the defendant. . . .

"There is no merit in the objection that the mistake was due to the forgetfulness of the attorneys and officers of the plaintiff who drew and executed the deed, or by their neglect in failing to compare the description in the deed as prepared with that in the lease. . . . [I]t was an inadvertence of a character which will sometimes occur in the conduct of men of prudence and caution. . . . The negligence was not so gross as to constitute a neglect of legal duty, or forfeit the right of either party aggrieved to relief from the mistake."

Los Angeles & Redondo R. Co. v. New Liverpool Salt Co., 150 Cal. 21, 25-28; 87 P. 1029 (1906).

UP does not believe that the elimination of the Central Corridor and/or I-5 Restrictions from the Restated and Amended Settlement Agreement resulted from any deliberate effort by BNSF to gain an advantage. Rather, it appears to be a mistake resulting from a number of factors, including the extended and sporadic nature of the negotiations on the Restated and Amended Settlement Agreement, the numerous issues under consideration by the parties during those negotiations (at least 36 were included in the chart of issues provided with BNSF's December 22, 2000, letter formally initiating the restatement and amendment process), and a poorly implemented effort by the parties to simplify the Original Settlement Agreement provision on the Central Corridor and I-5 Restrictions without substantively changing (and certainly not eliminating) it. The evidence drawn from the negotiations between the parties over the Restated and Amended Settlement Agreement clearly and convincingly leads to the inevitable conclusion that the parties did not intend to eliminate either the Central Corridor Restriction or the I-5 Restriction when they revised Section 1(g):

- the BNSF-proposed redraft of Section 1(g) retained both Restrictions;
- the elimination of the Restrictions was never discussed by the parties during those negotiations; and
- the Section 1(g) alternative proposed by UP that retained the Restrictions was considered interchangeable with the defective alternative ultimately adopted by the parties.

The parties' mistake in adopting a revised Section 1(g) that inadvertently dropped those Restrictions should now be corrected. Doing so will return BNSF and UP to the position that each agreed to in the Original Settlement Agreement, and continued to adhere to in the negotiations for the Restated and Amended Settlement Agreement.

VI. HOW THE RESTATED AND AMENDED SETTLEMENT AGREEMENT SHOULD BE REFORMED

The parties made a mistake when they attempted to simplify the language of Section 1(g) of the Original Settlement Agreement. The Board can and should correct this mistake to return the parties, and their customers, to the positions they occupied before it was made. It can do so simply by substituting the words "trains must" for the words "manifest trains may" in the fifth line of Section 1(g) of the Restated and Amended Settlement Agreement. (The second sentence of Section 1(g) would thus read as follows: "These BNSF trains must be either I-5 Corridor or Central Corridor trains.") Doing so will restore the original and continuing intent of the parties with respect to the extent of BNSF's permitted use of the trackage rights it received to compete with UP for I-5 and Central Corridor Route intermodal traffic. Not doing so will permit the continuation of unauthorized BNSF train movements that (1) cause delays to the passenger trains that operate over the Cal-P Line, (2) disrupt and congest UP's operations, and (3) unnecessarily and for no legitimate reason distort the relative competitive positions of UP and BNSF to the disadvantage of UP and its customers.

VII. THE NEED FOR EXPEDITED CONSIDERATION

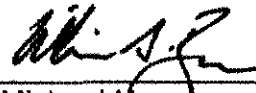
BNSF's operation of the unauthorized trackage rights trains has caused congestion on the Cal-P Line with resulting interference with the operation of passenger and freight trains over that Line. It has also required UP to reroute certain of its freight trains over much longer, alternate UP routes, including its Altamont line, where they interfere with both freight and passenger trains. This interference with UP's freight operations compromises UP's ability to compete with BNSF for highly competitive traffic. The interference with passenger train operations often results in delays to

passengers, including those who rely on timely service to commute to and from work. Finally, UP cannot effectively compete with BNSF for growing traffic at the Port of Oakland. These injuries are difficult to quantify, but are nevertheless real and continuing. The Board should give this Petition expedited consideration to ensure that the unauthorized operation that causes these damages is ended as quickly as possible and cannot later recommence.

VIII. RELIEF SOUGHT

Accordingly, UP requests that the Board (1) give expedited consideration to this Petition and (2) reform the language of Section 1(g) of the Restated and Amended Settlement Agreement to read as proposed above.

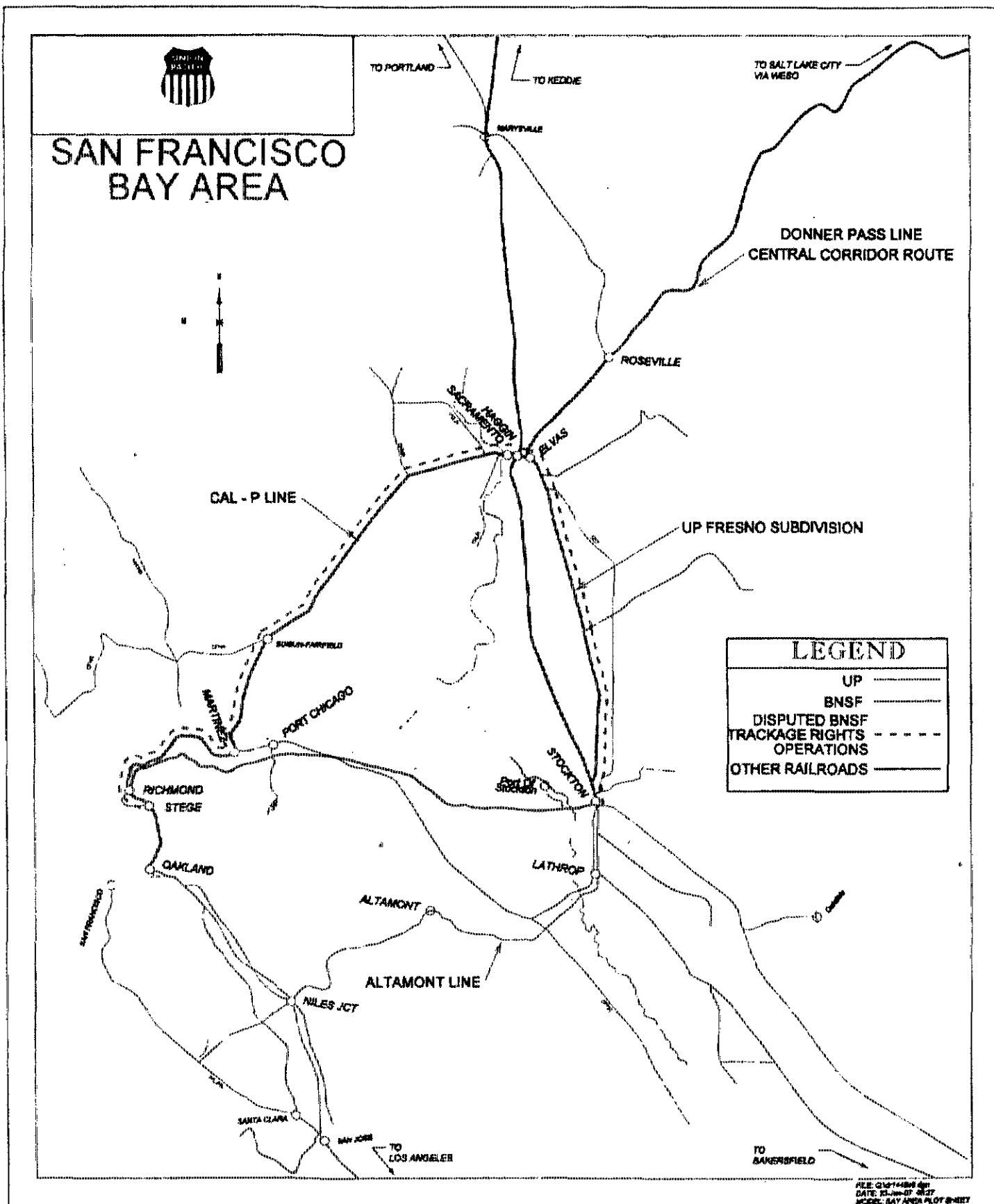
Respectfully submitted,



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Lawrence E. Wzorek
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*Attorneys for Union Pacific
Railroad Company*

February 16, 2007



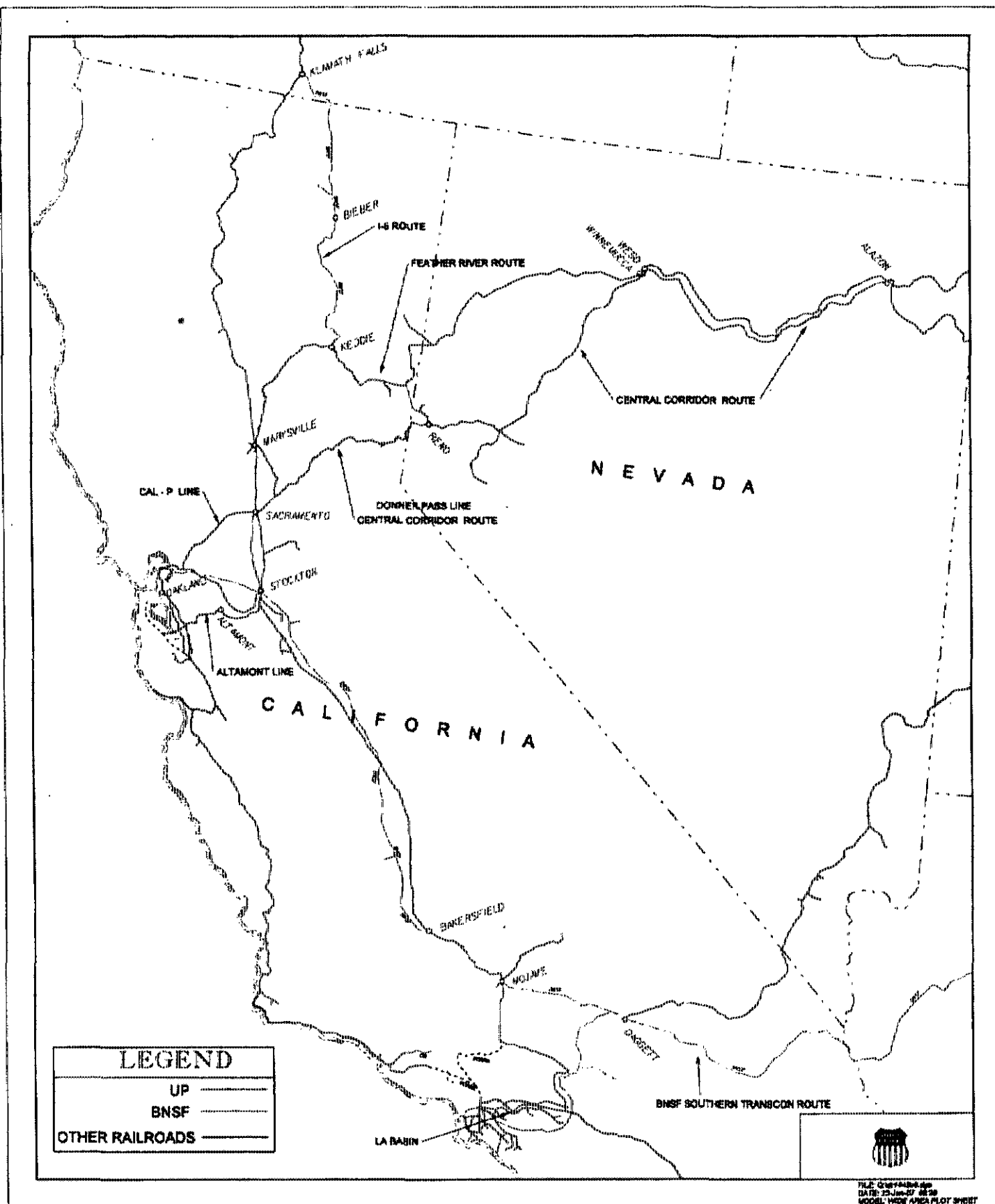


EXHIBIT C

Verified Statement of Thomas F. Jacobi

My name is Thomas F. Jacobi. I am Union Pacific Railroad Company's ("Union Pacific" or "UP") Vice President of Operations for the Western Region. My office is located at 10031 Foothills Blvd., Roseville, California 95747. I am submitting this verified statement in support of the Petition of Union Pacific Railroad Company for Reformation of Agreement being filed by UP with the Surface Transportation Board in Finance Docket No. 32760.

I joined UP in 1977 and have held a number of positions in its Operating Department. Prior to assuming my current position, I was General Manager – Transportation on the Northern Region, Assistant Vice President of operations in Omaha, and Vice President – Premium Operations (Intermodal and Automotive) in Omaha. I have been Western Region Vice President since November 2003. The Western Region encompasses all of UP's trackage west of El Paso and Salt Lake City, including all of California and the Pacific Northwest.

As Western Region Vice President, I have primary accountability for the safe and efficient operations of all Union Pacific freight trains and the responsibility to assure safe and on-time operation of Amtrak and commuter trains on my region. My first responsibility is to assure that Union Pacific and Amtrak and commuter passenger trains are operated according to plan as efficiently and safely as possible on the Western Region.

In central California, UP's Roseville Service Unit arranges for train operations under my overall supervision. One of the Roseville Service Unit's key main lines is the

Martinez Subdivision between Oakland and Roseville Yard. This main line continues eastward over Donner Pass as the Roseville Subdivision to Reno and Sparks, and then runs across the northern part of the State of Nevada through the cities of Winnemucca, Carlin, and Elko, eventually reaching Ogden, Utah, and points east. This line is part of a transcontinental route through the center of the country known as the Central Corridor. The map attached to UP's Petition as Exhibit B depicts this portion of the Central Corridor.

The section of the Martinez Subdivision between Oakland Harbor and Sacramento is traditionally referred to as the "Cal-P" after the name of the predecessor railroad - California Pacific - that constructed the bulk of it in the late 1860s.

At Elvas (also called Elvas Interlocking), three miles east of Sacramento and ninety miles from the Oakland Harbor, Union Pacific's Fresno Subdivision diverges to the south from the Cal-P. The Fresno Subdivision is a single track CTC main line to Stockton, Fresno and Bakersfield. This line is part of the larger I-5 Corridor between Seattle and Southern California. The map attached to UP's Petition as Exhibit A depicts the Cal-P and other railroad lines in the vicinity, including BNSF's main line from Stockton to Richmond north of Oakland. I have attached the current timetable page for the Martinez Subdivision as Exhibit I to this verified statement.

BNSF's main line runs from Richmond eastward to Stockton, where it turns southward to Fresno and Bakersfield. At Bakersfield, BNSF trains operate as trackage rights trains over UP's Tehachapi Line to Mojave and then return to BNSF trackage over to Barstow. At Barstow, BNSF trains may continue eastward to Chicago over the

Southern Corridor or run into Southern California over Cajon Pass to the Los Angeles Basin and the ports of Los Angeles and Long Beach.

It is my understanding that BNSF obtained trackage rights over the Cal-P line directly to and from Oakland Harbor as part a settlement with UP in the UP/Southern Pacific merger. However, I am informed by UP's senior management that there are two key restrictions on these trackage rights: first, that intermodal and automobile trains must operate east of Weso (Winnemucca) on the Central Corridor or north of Keddie on BNSF's Bieber Line; and second, that only one manifest train daily is permitted via the Cal-P.

I am also informed that BNSF intermodal and automobile trains (and one manifest train) are authorized to operate over UP's Fresno Subdivision south of Elvas provided that they also operate east of Weso. However, unlike the Cal-P, no BNSF trains to or from the Keddie-Bieber line are permitted to operate on the Fresno Subdivision.

As part of the UP/SP merger settlement, BNSF also obtained trackage rights over the former Western Pacific main line (Feather River Line) between Weso and Stockton. BNSF may operate intermodal trains and manifest trains via this route without restriction.

The dispute with BNSF in this proceeding concerns the operation of BNSF intermodal trains over the Cal-P and Fresno Subdivision between Oakland Harbor and Elvas Interlocking, and on the Fresno Subdivision between the latter point and Stockton (where there is a connection from UP's main line to BNSF's main line coming from Richmond).

The Cal-P line is a critical freight and passenger train corridor for Union Pacific and for the State of California. The Capitol Corridor Joint Powers Authority ("CCJPA")

operates 32 passenger trains daily (16 in each direction) between Sacramento and Oakland over the Cal-P. This operation is funded by the California Department of Transportation ("Caltrans") and staffed by Amtrak. Amtrak operates four long distance trains daily (two each way) over the same Cal-P route. In addition, Caltrans also funds and Amtrak staffs four San Joaquin passenger trains (two each way) daily over the Fresno Subdivision between Sacramento and Stockton and eight San Joaquin passenger trains daily (four each way) between Oakland and Martinez, a distance of some thirty miles, over the Cal-P. These latter trains operate over UP's Tracy Subdivision to Port Chicago where they transfer to BNSF's main line to Stockton.

Therefore, there are 44 passenger trains daily (weekdays) on the Cal-P double track main line between Oakland and Martinez, 36 passenger trains daily (weekdays) over the Cal-P between Martinez and Sacramento, and eight passenger trains daily from Sacramento to Elvas over the Cal-P. This is one of the heaviest density passenger train lines in the country.

Union Pacific needs to operate approximately fourteen to sixteen freight trains daily on the Cal-P. These UP trains consist of double stack intermodal trains and automobile trains moving over the Central Corridor, manifest trains moving between Roseville Yard and points in the Bay Area and south, and local trains and switching movements. Major refineries and chemical plants in the Martinez area require constant deliveries and switching services. A large automobile ramp at Benicia, major industries in Richmond, and the important intermodal ramps at the Port of Oakland also require service.

On a typical day, between 50 and 56 freight (including the BNSF trackage rights trains) and passenger trains operate on the Cal-P between Martinez and Sacramento. Depending on traffic patterns, frequently more than 60 total trains are operated on the line. Currently, the maximum fluid capacity of the Cal-P line is limited to 50 – 60 total trains daily. Therefore, we frequently exceed fluid capacity and have no room for error whatsoever. As a result of all these trains, the Cal-P often is heavily congested at points such as Martinez, and unintentional, but inevitable, delays to passenger trains and freights occur.

The Cal-P is dispatched primarily from UP's Harriman Dispatch Center in Omaha, with the Sacramento-Elvas Interlocking trackage dispatched from the Roseville Yard. I know firsthand that it is a monumental challenge to keep the passenger trains on time every day and still maintain reasonably efficient freight operations.

Our Capitol Corridor passenger train on-time performance has declined because we are either at or over the fluid capacity of the Cal-P. Our monthly on-time rate has fallen below 90% and we are being criticized by the CCJPA for our poor performance.

In addition to the trains, we have ongoing maintenance crews on the line, one of which works at night, to keep up with repairs and replacements. This activity is directly related to maintaining reliability and ride quality for all the CCJPA and Amtrak trains on the line. Currently, there is a major tie replacement project on the Cal-P west of Martinez. This has forced me to order a curfew for all through freight trains, including the BNSF trains, during daylight hours in order to avoid lengthy delays to the Capitol Corridor and Amtrak passenger trains. I have not decided whether I will extend the curfew after the tie

gang departs. I may have to do so if necessary to maintain on time performance of the passenger trains.

Recently, while reviewing passenger train performance on the Cal-P, I became aware that the BNSF is operating three or four daily intermodal trains (total in both directions), including an empty platform repositioning train, on the Cal-P between the Port of Oakland and Elvas Interlocking and then over the Fresno Subdivision to Stockton. These loaded container trains operate to and from Barstow and points east over BNSF's Southern Corridor. The empty repositioning train operates from Oakland Harbor to the ports of Los Angeles and Long Beach via Barstow. This is an entire train of container platform cars without any containers. Repositioning of platform cars (also called "bare table" trains) is required due to a continual shortage of such cars at the ports of Los Angeles and Long Beach.

My understanding is that BNSF's trackage rights over the Cal-P and the Fresno Subdivision are only for loaded intermodal trains operating over UP's Central Corridor east of Winnemucca (Weso). BNSF intermodal trains to and from Los Angeles or Chicago via BNSF's Southern Corridor are not supposed to be operated on the Cal-P.

It is my opinion based on my years of operating experience that these improper BNSF intermodal trains are creating difficult operating conditions for UP's trains and are contributing to our failure to keep CCJPA and Amtrak's passenger trains on-time over the Cal-P. Our goal is to operate ninety-six percent of the Capitol Corridor commuter trains on time. Beginning in August 2006, our on time percentage has been around eighty percent on average and has been as low as 75 percent (in December 2006). These BNSF

trains also create congestion on the Fresno Subdivision and interfere with the four San Joaquin passenger trains we run on that line.

My responsibilities as regional vice president include close coordination with the Roseville Service Unit operating managers and the Harriman dispatchers and corridor managers who direct the movement of trains on the Cal-P. I am charged with providing the resources needed to move trains in accordance with our overall transportation plan. I am very familiar with the daily problems associated with train operations on this line. This problem has been aggravated since BNSF began running its intermodal trains. I am not able to provide the capacity resources for UP's freight trains with these improper BNSF trackage rights trains soaking up all the extra train slots. As a direct result of this BNSF operation, I have been required to divert UP freight trains to other routes to and from the Bay Area in order to keep the total train count on the Cal-P within fluid capacity range. Diversion of UP trains to other routes slows down my operations and increases my costs considerably. Further, I now have no room for any growth in UP's freight traffic and UP definitely cannot consider adding any more passenger trains on the Cal-P as various local governments have requested.

I am not certain why BNSF started this operation over the Cal-P, but I am informed it has problems with congestion between Richmond and Stockton and with blocked crossings and horns in the City of Richmond. I understand that rather than address those issues on its own line, BNSF unilaterally decided to divert several unauthorized intermodal trains daily to UP's Cal-P line. BNSF has the right to operate these trains on that section of the Cal-P between Oakland Harbor and Stege (Richmond) over which it received trackage rights long before the grant of the trackage rights now in

dispute. There is no dispute with BNSF's operations over the Oakland Harbor - Stege section of the Cal-P. However, I was not notified in advance by BNSF that it intended to begin this unauthorized operation beyond Stege.

When I was appointed to the Western Region a little over three years ago, BNSF always returned its trains to its own main line at Stege, and operated through Richmond on its own trackage and then on to Stockton via its existing main line. The recent capacity problems that I describe in this statement have arisen because, instead of operating on its own rails between Richmond (Stege) and Stockton, BNSF now insists on operating these trains on the Cal-P from Stege all the way to Elvas Interlocking, where they turn south onto the Fresno Sub for the run to Stockton (or vice versa).

I have tried to work with BNSF to resolve the Cal-P issues but it will not do so. BNSF wants to use our main lines on the Cal-P and Fresno Sub to solve its operational and congestion issues between Richmond and Stockton. While I understand BNSF's problems, its decision to divert Southern Corridor intermodal trains (including repositioning moves to the ports in Southern California) to our Cal-P line, which has 36 passenger trains daily, compared to only eight Amtrak passenger trains on the portion of its main line between Port Chicago (east of Martinez) and Stockton, is unreasonable as well as unauthorized.

As stated above, Union Pacific is facing serious capacity issues on the Cal-P line. Adding capacity would be very difficult and expensive. The right of way is bordered by San Pablo Bay, encroaching development, wetlands, and heavy industry. There are two major drawbridges over navigable waterways, a lengthy causeway over a sensitive river bypass between Davis and Sacramento, and congested terminal facilities in Sacramento.

Also, UP's lines north and east out of the San Francisco Bay area are at or near capacity. This includes our circuitous line over Altamont Pass between Oakland and Stockton on which the ACE commuter trains operate. I am concerned that ACE's on time performance will suffer like the Capitol Corridor's if we have to divert our trains to Altamont Pass. I anticipate that these capacity constraints will only increase for several reasons, particularly if the Port of Oakland pursues a proposed major expansion project. UP's current rail network will be unable to handle increased traffic flows with the addition of these unauthorized BNSF intermodal trains over the Cal-P.

We cannot run our own trains and all the passenger trains in a reliable and efficient manner if we are forced to accept unauthorized BNSF trains which should be on BNSF's main line. BNSF should be encouraged to resolve its own problems at Richmond. I am willing to work with BNSF to help them as much as I can, within reason, as I understand their issues, but putting these trains on the Cal-P is not a reasonable solution.

Based on my experience as an operating officer, I do not believe it is possible for Union Pacific to continue to operate up to three or four extra BNSF intermodal trains on a daily basis over the Cal-P line without significant delay to Amtrak and commuter trains and to our own freights. UP runs the risk of creating gridlock on the Cal-P line at some point in the near future. This risk and the likely harm to shippers, and to the rail traveling public, are simply not worth it.

Executed at Roseville, Calif., this 16 day of Feb,

2007.

Thomas F. Jacobi
Thomas F. Jacobi

VERIFICATION

STATE OF California)
) ss.
COUNTY OF Placer)

Thomas F. Jacobi, being duly sworn, deposes and says that he is the Western Region Vice President for Union Pacific Railroad Company, and has read the foregoing statement, knows the contents thereof, and that the same is true and correct.

Thomas F. Jacobi
Thomas F. Jacobi

Subscribed and sworn to before me by Thomas F. Jacobi this 16 day of February, 2007.

Leri A. Maldonado
Notary Public



MARTINEZ SUBDIVISION (0910)

Mile Post	Rule 6.3	CP #s	Radio Display: East Roseville to MP 88.1 -5151 MP 88.1 to 10th St. -4646		Sta. #s	Sliding Feet
			WEST STATIONS	EAST		
106.4	CTC	RV106	EAST ROSEVILLE (1.1)	8TX	RV323	
105.3		RV105	WEST ROSEVILLE Trk.1 (0.5)			
104.7		RV104	EAST ATKINSON (0.2)	X		
104.5		RV103	WEST ATKINSON (1.4)	X		
103.1		RV102	ANTELOPE (1.8)	X	RV327	
101.3		RV101	CITRUS HEIGHTS (2.9)	X		
93.4	CTC	RV093	SWANSTON (1.2)	X	RV336	
92.0	CTC	RV092	ELVAS (1.1) (Elvas Interlocking)	XT	RV338	
91.7	2MT	RV091				
90.6	CTC	RV090	EAST HAGGIN (0.4)	X		
90.2	CTC	RV089	WEST HAGGIN Trk.1 (1.4)			
88.8		RV088	SACRAMENTO (0.3)	X	RV340	
88.5		RV088	1 STREET BRIDGE (0.4)			
88.1		RV087	WEST SACRAMENTO (1.2)		RV342	
86.9		RV085	MIKON (11.3) (INDIPCK)		RV344	
75.6		RV077	EAST DAVIS (0.2)	TX	N 8206	
75.6					\$ 3980	
75.4		RV076	TOWER (0.4)	T	RV345	
75.0		RV075	WEST DAVIS (0.5)	TX		
65.5		RV085	PITT (13.5)	X		
52.0		RV082	TOLENAS (9.7)	X	RV378	
42.3		RV042	CORDELIA (7.9)	X		
34.5		RV035	BENICIA (1.5)		RV388	
33.0		RV033	VISTA (1.0)	X		
32.0	CTC	RV032	MARTINEZ Trk.1 (0.2)		RV388	
31.8	3MT	RV032	FERRY Trk.2 (0.2)	X		
31.0		RV031	OZOL (0.9)	X	RV390	10340
30.1	CTC	RV030	HOWARD (2.8)	X		
27.5	2MT	RV027	COSTA (18.7)	X		
20.8		RV021	MERCULES (0.4)	X	RV400	
20.4		RV020	PINOLE (5.1)	X	RV401	
15.3		RV015	SAN PABLO (8.9)	X	RV407	
9.4		RV009	STEGE (14.2) (BNSF Conn.)	X	RV412	
6.2		RV007	SHELLMOUND (0.6)	X	RV418	
4.7		RV006	EAST EMERYVILLE (0.4)	X	RV417	

43	CTC	RV006	WEST EMERYVILLE Trk.2 (0.8)	RV418	
37	2MT	RV004	34TH STREET (0.5)	X	RV419
3.2		RV002	28TH STREET Trk.2 (1.0)		RV420
2.2		RV001	10TH STREET (Port of Oakland) X		

(104.2)

SI-01 MAIN TRACK AUTHORITY

CTC between:

MP 106.4 and MP 2.2.

CTC in effect on CPNR wye tracks at Davis.

SI-02 MAXIMUM SPEED TABLE

Maximum Speed	MPH	
Between Mileposts	PSGR FRT	
106.4 to 2.2 Trk.1		
(Except as Below).....	79	70
106.4 and 106.0.....	30	30
106.0 and 104.4.....	40	40
93.5 and 92.5.....	50	40
92.5 and 91.5.....	25	25
91.5 and 90.7 Trk.3.....	10	10
91.5 and 89.7.....	35	35
89.7 and 88.4.....	20	20
88.4 and 88.1.....	30	30
75.9 and 75.4.....	40	30
49.4 and 48.6.....	70	60
36.0 and 18.6.....	40	30
18.6 and 17.4.....	60	50
17.4 and 16.0.....	70	60
5.2 and 2.2.....	50	40

Between Mileposts	PSGR FRT	
2.2 and 106.4 Trk.2		
(Except as Below).....	79	70
2.2 and 5.2.....	50	40
16.0 and 17.4.....	70	60
17.4 and 18.6.....	60	50
18.6 and 34.6.....	40	30
31.0 and 31.8 Trk.3.....	30	30
34.6 and 37.5.....	60	40
48.6 and 49.4.....	70	60
75.4 and 75.9.....	40	30
88.1 and 88.4.....	30	30
88.4 and 89.7.....	20	20
89.7 and 91.5.....	35	35
90.7 and 91.5 Trk.3.....	10	10
91.5 and 92.5.....	25	25
92.5 and 93.1.....	55	45
104.4 and 106.4.....	40	40

ROSEVILLE Area Timetable No. 4 -- Effective: 12/18/2005

Exhibit A: Cal - P Line (Martinez Subdivision)
Union Pacific Railroad - Verified Statement of Thomas F. Jacobi

**VERIFIED STATEMENT
OF
EUGENE K. SKOROPOWSKI**

My name is Eugene K. Skoropowski. I am Managing Director of the Capitol Corridor Joint Powers Authority ("CCJPA," basically a special purpose district), an authority created under California law for the joint exercise of powers by public agencies. I hold a Bachelor's Degree in Architecture from The Catholic University of America in Washington, D.C. My railroad passenger transit career began in 1971 when I was appointed to the budgetary board of the Massachusetts Bay Transportation Authority ("MBTA") in Boston. I served on MBTA's budgetary board in 1976 when MBTA purchased all the assets of the Boston and Maine Railroad in eastern Massachusetts. In 1977, I joined the MBTA Railroad Operations Department, and served as Chief Railroad Services Officer until 1982.

In 1982, I joined the Southeastern Pennsylvania Transportation Authority ("SEPTA") in Philadelphia serving as Assistant General Manager. This work was in preparation for the transfer of all passenger rail service from Conrail to SEPTA, mandated to occur on January 1, 1983. I left that position in 1991 to join Fluor Corporation in Irvine, California, where I was Director of Rail Projects, first heading Fluor's team on the massive Los Angeles MetroRail system. Subsequent to that assignment, my tenure with Fluor involved rail projects in Canada, the United Kingdom, France, and the Netherlands.

I came to the CCJPA as Managing Director in August 1999. In this position, I am the CCJPA executive responsible for the operation of thirty-two weekday and twenty-two weekend Capitol Corridor passenger trains in the 170 mile territory of Union Pacific Railroad between Auburn and San Jose, California.

The CCJPA is comprised of six transportation-related member agencies in the eight county CCJPA area, of which San Francisco Bay Area Rapid Transit ("BART") is the Managing Agency. The CCJPA Board has sixteen members, six elected officials from BART, and two each from the other five member agencies. As administrative manager of rail passenger service over the Capitol Corridor route, the CCJPA's primary focus is the continuous improvement of the Capitol Corridor to deliver safe, reliable, frequent, and high-quality passenger rail service that is travel time-competitive with the congested I-80, I-680, and I-880 highway corridors.

I understand from the Union Pacific Railroad Company ("UP"), which owns the railroad lines over which CCJPA's Capitol Corridor trains operate, that a dispute exists between UP and BNSF Railway Company ("BNSF") over the extent to which BNSF may operate intermodal, manifest, and automotive freight trains over UP's Cal-P Line (Sacramento – Oakland) under trackage rights it received in the UP/Southern Pacific merger. This is the UP line over which the entire Capitol Corridor service operates. I am informed that the Cal-P Line trackage rights were designed to allow BNSF to compete with UP for intermodal and automotive traffic moving over (1) the Central Corridor route between Oakland and Denver via Salt Lake City, and (2) the so-called "I-5" route between Seattle and California via Keddie, CA. I further understand that the

1995 BNSF/UP agreement for these trackage rights thus restricted them to intermodal/automotive trains that also operate over the Central Corridor or the I-5 route.

I have been advised that UP and BNSF inadvertently omitted the above-referenced traffic restriction in a 2002 amendment and restatement of the agreement between UP and BNSF. Apparently based on that mistaken omission, BNSF in 2005 began to operate non-Central Corridor and non-I-5 intermodal/automotive trains over the UP's Cal-P Line. I have not independently verified the accuracy of the foregoing statements of fact, and I am not familiar with the specific agreement that is the subject of the dispute between BNSF and UP. However, I believe those statements to be accurate and I have assumed their accuracy for the purpose of making this statement.

I am submitting this statement in support of UP's petition to the Surface Transportation Board to correct the mistake UP and BNSF made in omitting the requirement that intermodal/automotive trackage rights trains operating over the Cal-P Line must also move over the Central Corridor route or the I-5 route. I support correction of the mistake because, in routing unauthorized intermodal/automotive trains over the Cal-P Line, BNSF is creating additional congestion that directly and adversely affects the reliability of the CCJPA Capitol Corridor trains that also operate on that line. As I will detail further, this Cal-P line was substantially rebuilt in 1995-96 at public expense for the specific purpose of developing and operating the safe, reliable, frequent, and high-quality passenger service previously mentioned.

Since August 28, 2006, the CCJPA has operated 32 (16 in each direction) Capitol Corridor trains each weekday on the Cal-P Line between Martinez and Oakland. With the four Amtrak national network trains and eight additional Amtrak San Joaquin

intercity trains that also operate daily between Martinez and Oakland, these 44 weekday passenger trains make that Cal-P Line segment the most heavily used intercity passenger train line in the United States, outside of the Northeast Corridor. The State of California has invested nearly \$196.8 million (as of December 2005) in the Cal-P Line tracks, signals and other railroad operating infrastructure for the specific purpose of expanding/improving the then-existing capacity on the Cal-P Line for passenger service, while protecting and incrementally expanding UP's freight capacity. At no time were capacity provisions envisioned or made for the now disputed BNSF service on the Cal-P Line. Capacity model studies funded by the CCJPA for capital investments on the Cal-P Line never included any of this added BNSF service when the scope and magnitude of State investments was determined for passenger capacity and reliability purposes.

On a typical weekday, between 50 and 55 passenger and freight trains (both UP and BNSF) operate on the Cal-P Line between Oakland and Sacramento. Given my understanding of the Line's fluid capacity limits, the operation of that number of trains represents a heavy load, and the Cal-P Line often is heavily congested at Martinez and other points. This congestion inevitably results in delays to CCJPA's Capitol Corridor trains, and at the time when the BNSF commenced operating the disputed trains on the Cal-P Line, the Capitol Corridor experienced a significant degradation in our service performance and our on-time reliability. Though it is UP's goal to operate at least 96% of the Capitol Corridor trains on time, since August 2006, the monthly on time percentage of Capitol Corridor trains has slipped to around 80%, and this past December it was as low as 75%. This is an unacceptable level of performance for passenger service, particularly in a time-sensitive passenger travel market.

I believe that the recent addition of these BNSF trains to the segment between Sacramento and Richmond has contributed to the deterioration in on time arrivals of the Capitol Corridor trains that operate over the Cal-P Line.

Capitol Corridor train passengers are, for the most part, business travelers and regular riders who rely on timely, dependable service when they use our trains. The characteristics and demographics of our riders are virtually identical to riders on Amtrak's busy Northeast Corridor. In fact the Capitol Corridor frequency of trains, as of August 28, 2006, is identical to Northeast Corridor frequency between Boston and New York. As the riders on our trains are also the California taxpayers who have funded the investments made for passenger service along the Cal-P Line, they are entitled to, and should receive, timely and dependable service. The State of California has made significant financial investments in the Cal-P Line, totaling \$296.9 million (through December 2005, and not including rolling stock or maintenance and layover facilities), with \$196.8 million of that amount for track/signal/infrastructure improvements (again, through December 2005). If, as I am told, BNSF is operating trackage rights trains over a line that it has no right to operate, it is unjustifiably benefiting from this public investment to the disadvantage of the passengers of the Capitol Corridor and other passenger trains.

In operating unauthorized trains over the Cal-P Line, BNSF is taking advantage of the State's (not to mention the UP's) substantial infrastructure investments in that segment. If by doing so BNSF seeks to solve capacity constraints on its single-track line between Stege (Richmond) and Stockton while avoiding necessary capital investments, it does so unfairly and without authority at the expense of others, including

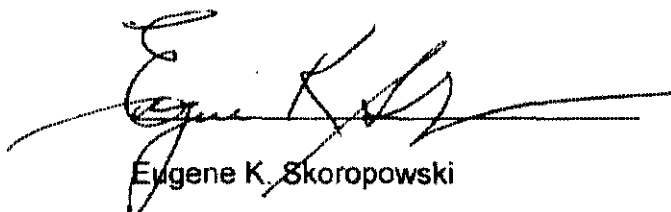
the taxpayers and the rail traveling public. It does not to me seem right to allow BNSF to divert unauthorized trains from its own, shorter Stege (Richmond) – Stockton line - - which handles only eight Amtrak trains daily between Port Chicago (east of Martinez) and Stockton - - to UP's highly congested Cal-P Line, whose Martinez - Sacramento segment handles 44 passenger trains daily along with UP's 14 - 16 freight trains. The unfairness of this unauthorized operation seems particularly egregious when one considers that BNSF could operate those freight trains over its own shorter (by some 50 miles) route between Richmond and Stockton. I believe that the operation of these unauthorized BNSF trains will, if allowed to continue, in time make the operation of Capitol Corridor trains over the Cal P-Line so unreliable as to discourage ridership, which is the exact opposite of the State's public policy and the opposite of the purpose for which the publicly funded investments were made in the first place.

The BNSF interference with passenger train operations often results in delays to passengers, including those who rely on timely service for business and work trips. While these damages are difficult to quantify, they are nevertheless real and continuing. The Board should give UP's petition expedited consideration to ensure that the unauthorized operation that causes these damages is ended as quickly as possible and will not later recommence.

As has been noted, the State of California through 2005 expended at least \$196.8 million of public money over the prior ten years to implement, and expand and make more reliable the Capitol Corridor passenger service over UP trackage. As stated, in 2006, we increased the number of weekday trains between Oakland and Sacramento to thirty-two, sixteen in each direction. We expect that UP will operate these trains at the

96% on-time target. I have serious reservations that UP will be able to do so if BNSF continues to operate these disputed intermodal/automotive trains over the same route.

Executed at OAKLAND, California, this 14th day of February, 2007.

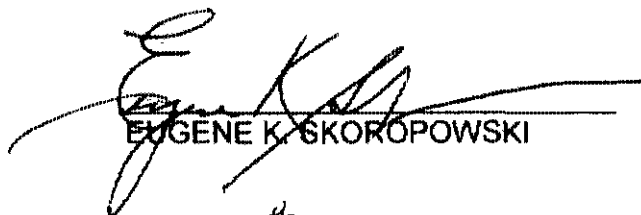

Eugene K. Skoropowski

VERIFICATION

STATE OF CALIFORNIA)

COUNTY OF Alameda)

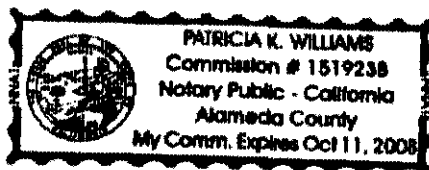
I EUGENE K. SKOROPOWSKI, being duly sworn, state that I have read the foregoing statement, that I know its contents, and that those contents are true as stated.


EUGENE K. SKOROPOWSKI

SUBSCRIBED AND SWORN TO before me this 14th day of February, 2007.


NOTARY PUBLIC

My Commission expires: October 11, 2008



BNSF TRAINS OPERATED OVER CAL-P LINE
2004 - 2006

MONTH	2004				2005				2006			
	CENTRAL CORRIDOR OR I-5	SOUTHERN TRANSCON	BARE TABLE	TOTAL	CENTRAL CORRIDOR OR I-5	SOUTHERN TRANSCON	BARE TABLE	TOTAL	CENTRAL CORRIDOR OR I-5	SOUTHERN TRANSCON	BARE TABLE	TOTAL
JAN	2	0	0	2	3	0	0	3	0	58	7	65
FEB	2	0	0	2	0	1	0	1	0	45	2	47
MAR	6	0	0	6	0	12	2	14	0	49	4	53
APR	2	0	0	2	4	12	7	23	0	60	13	73
MAY	2	0	0	2	0	17	0	17	0	56	19	75
JUN	0	13	5	18	1	25	1	27	0	68	15	83
JUL	0	0	0	0	0	20	2	22	0	65	21	86
AUG	2	0	0	2	1	36	4	41	0	80	35	115
SEP	2	0	0	2	0	83	3	86	0	75	26	101
OCT	6	0	0	6	0	81	3	84	0	82	27	109
NOV	8	0	0	8	0	77	8	85	1	78	10	89
DEC	7	1	0	8	0	66	4	70	1	64	14	79
TOTALS	39	14	5	58	9	430	34	473	2	780	193	975

CAL-P Line Chart 020607

EXHIBIT F

VERIFIED STATEMENT OF JOHN H. REBENS DORF AND LAWRENCE E. WZOREK

John H. Rebensdorf:

My name is John H. Rebensdorf. I am Vice President-Network Planning and Operations for Union Pacific Railroad Company ("UP"). I hold a Bachelor's Degree in Civil Engineering from the University of Nebraska and a Master's Degree in Business Administration from Harvard University. I began my railroad career in 1961 in the Mechanical Department of the Chicago, Burlington & Quincy Railroad Company, and between 1962 and 1967 I was employed in the Operating and Engineering Departments of the Chicago, Rock Island and Pacific Railroad Company. I joined Union Pacific Corporation in 1968. In 1971, I came to UP as Manager of Budget Research, becoming Assistant Controller in 1976, Assistant Vice President-Planning & Analysis in 1980, Assistant Vice President-Finance in 1984, Vice President-Strategic Planning in 1987, and Vice President-Network and Service Planning in 1998. I was appointed to my present position in 2003.

Lawrence E. Wzorek:

I am Assistant Vice President-Law for UP. I received my undergraduate degree from Creighton University in 1969; and, in 1972, I graduated from Georgetown

University Law Center. After serving in the United States Army as an officer in the Judge Advocate General's Corps and then engaging in the private practice of law in Washington, D.C., I joined UP's Law Department in 1984. I have served in my current position since 1998.

We are submitting this statement in support of UP's request that the Board reform (i.e., modify) the Restated and Amended BNSF Settlement Agreement (the "Restated and Amended Settlement Agreement") jointly submitted by UP and BNSF to the Board on March 1, 2002. UP seeks reformation of the Restated and Amended Settlement Agreement to ensure that it reflects the parties' intent to restrict BNSF's operation of Intermodal Trains¹ between Stege (Richmond), California, and Sacramento, California, and between Sacramento and Stockton, California, to Intermodal Trains that operate in transcontinental movements over UP's Central Corridor route between Denver, Colorado, and Oakland, California, via Salt Lake City, Utah (the "Central Corridor Route") or over the so-called "I-5" rail route between Seattle, Washington, and Southern California generally paralleling Interstate Highway 5 (the "I-5 Route"). These restrictions are referred to in this Verified Statement individually as the "Central Corridor Restriction" and the "I-5 Restriction" and collectively as the "Restrictions."

Mr. Rebensdorf represented UP in its negotiations with BNSF that resulted in the September 25, 1995, Agreement (the "Original Settlement Agreement") addressing competitive issues allegedly raised by the proposed merger of UP and SP. Mr.

¹ For purposes of this Verified Statement, the term "Intermodal Trains" means trains comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double-stack configurations.

Rebensdorf and Mr. Wzorek served as UP's primary representatives in its negotiations with BNSF for the Restated and Amended Settlement Agreement of 2002.

Mr. Rebensdorf states that the trackage rights over UP's Cal-P Line were included in the Original Settlement Agreement because BNSF insisted that they were necessary to allow BNSF to compete with UP for (1) transcontinental intermodal traffic moving over UP's Central Corridor Route and (2) for intermodal traffic moving to/from the Pacific Northwest and San Francisco Bay area. Accordingly, Section 1(g) of the Original Settlement Agreement provided (in pertinent part):

"On SP's line between Weso and Oakland via the 'Cal-P,' BNSF shall be entitled to move only (i) intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one manifest train/day in each direction. Intermodal trains are comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration." (Emphasis added.)

The parties entered into a Second Supplemental Agreement dated June 27, 1996, that amended Section 1(a) of the Original Settlement Agreement. It granted BNSF trackage rights over that segment of UP's Fresno Subdivision between Elvas (Elvas Interlocking in Sacramento) and Stockton (the "Elvas – Stockton Line")

"(subject to traffic restrictions as set forth in Section 1g and also excluding any trains moving over the line between Bieber and Keddie, CA, to be purchased by BNSF pursuant to Section 2a of this Agreement)."

Mr. Rebensdorf states that BNSF was granted rights over the Elvas – Stockton Line because BNSF was unable to construct a connection at Haggin (Sacramento) that would have permitted it to connect UP's east-west Donner Pass line between Oakland and Weso with UP's north-south I-5 line over which BNSF had previously received trackage rights (see the maps attached as Exhibits A and B to UP's Petition).

By late 2000, BNSF and UP decided to amend and restate the Original Settlement Agreement to clarify certain issues that had arisen in implementing the trackage rights it granted, to incorporate the conditions imposed by the Board on the UP/SP merger (including their agreement with the Chemical Manufacturers Association, as modified by the Board), and to adopt certain agreements they had reached pertaining to those conditions and other related matters. The Restrictions were not among the matters requiring revision. BNSF and UP also determined to clarify or simplify certain provisions of the Original Settlement Agreement, as supplemented, including Section 1(g).

BNSF did not intend to make a substantive change in Section 1(g). Attached as Attachment I is an email that Mr. Wzorek received on December 22, 2000, from BNSF Senior General Attorney Michael E. Roper regarding the restatement and amendment of the Original Settlement Agreement, as supplemented. Attached to Mr. Roper's email were a cover letter, "clean" and red-lined versions of a draft restated and amended settlement agreement, and a chart "showing the principal sections which have been changed and a brief description of the modifications." (Mr. Roper's cover letter, the chart, and Section 1(g) as it appears in both the "clean" and red-lined versions of the redraft are included as a part of Attachment I.) Section 1(g) of this redraft retained the Central Corridor and I-5 Restrictions, rephrasing them only slightly to improve their syntax while making no change in their substance.² Significantly, the BNSF-prepared

² Where the Central Corridor and I-5 Restrictions on Intermodal Trains in the Original Settlement Agreement permitted only "intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland . . .", those Restrictions in the draft of the Restated and Amended Settlement Agreement proposed by BNSF permitted only "intermodal trains moving between Oakland and Weso and points east or Keddie and points north . . ."

chart showing changes (some 36 are listed) in principal sections contains no reference to Section 1(g).

In sporadic exchanges of drafts and intermittent discussions over a period of approximately a year and a half, BNSF and UP negotiated the Restated and Amended Settlement Agreement, which they jointly submitted to the Board on March 1, 2002.

Section 1(g) of the Restated and Amended Settlement Agreement, reads in pertinent part as follows:

"BNSF may operate only the following trains on SP's 'Cal-P' line between Sacramento and Oakland: (i) intermodal and automotive trains composed of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration and (ii) one overhead through manifest train of carload business per day in each direction. These BNSF manifest trains may be either I-5 Corridor or Central Corridor trains. On the Donner Pass line between Sacramento and Weso, BNSF may operate only intermodal and automotive trains as described in clause (i) and one overhead through manifest train of carload business per day in each direction." (Emphasis added.)

It has recently come to UP's attention that BNSF has operated and continues to operate Intermodal Trains over the Cal-P Line and the Elvas – Stockton Line that do not move between Oakland and Weso and points east or between Oakland and Keddie and points north. These Intermodal Trains generally appear to be transcontinental trains moving over BNSF's Southern Transcon route. In addition, BNSF has operated trains of empty intermodal equipment (so-called "bare table" trains) that BNSF repositions from the Port of Oakland to the Los Angeles, California, area. The operation of bare table trains is authorized by neither the Original Settlement Agreement nor the Restated and Amended Settlement Agreement. And the operation of Southern Transcon trains over the segments is in direct conflict with the parties' intent that, under either (1) the Original Settlement Agreement, as amended through the Second Supplemental

Agreement, or (2) the Restated and Amended Settlement Agreement had it been revised properly, BNSF Intermodal Trains using UP's Cal-P or Elvas – Stockton Lines must also move over the Central Corridor Route or over the I-5 Route.

Mr. Rebensdorf states that it was never the parties' intent that the Original Settlement Agreement, as amended through its Second Supplemental Agreement dated June 27, 1996, allow BNSF to use those trackage rights for the operation of either (1) trains of empty intermodal equipment or (2) loaded trains operating in transcontinental movements over BNSF's Southern Transcon route. And Mr. Rebensdorf and Mr. Wzorek state that at no time during the negotiations for the Restated and Amended Settlement Agreement did BNSF ever express to UP that the Restrictions should no longer be maintained under that agreement. The failure of the Restated and Amended Settlement Agreement to continue to reflect the parties' intent that the Central Corridor Restriction and the I-5 Restriction would continue to apply to these trackage rights is a mistake of the parties that should be corrected by reformation. The Board should reform the Restated and Amended Settlement Agreement to include the Restrictions as they appeared in the Original Settlement Agreement and in the Second Supplemental Agreement.

We have carefully reviewed our files and notes on the correspondence and discussions between UP and BNSF during the negotiation of the Restated and Amended Settlement Agreement. That review reveals that, as noted above, BNSF first proposed a revision of Section 1(g) that retained the Central Corridor and I-5 Restrictions on BNSF's use of the Cal-P Line and the Elvas – Stockton Line. In response, UP simultaneously proposed the version of Section 1(g) of the Current

Settlement Agreement that was ultimately accepted by the parties and jointly submitted by them to the Board, and an alternate version that retained the Restrictions essentially in the form set forth in Section 1(g) of the Original Settlement Agreement. Both versions were considered by UP to be equivalent and interchangeable. (Attached as Attachment II is the May 2, 2001, email from Mr. Wzorek to BNSF's retained counsel proposing UP's two alternatives to Section 1(g).)

No change in or elimination of the Central Corridor Restriction and/or the I-5 Restriction was discussed between the parties during those negotiations. And it never remotely occurred to UP and its negotiators that BNSF would divert trains from its own direct route between Stockton and Richmond in preference for a more circuitous (by 50 miles) route over UP. The parties' mistake in modifying Section 1(g) in a way that eliminated the Restrictions should now be corrected to continue the limitation on BNSF's use of its San Francisco Bay area trackage rights expressed so clearly in the Original Settlement Agreement.

We believe that the best, and simplest, way to correct the parties' mistake would be to substitute the words "trains must" for the words "manifest trains may" in the fifth line of Section 1(g) of the Current Settlement Agreement. As a result, the second sentence of Section 1(g) would read as follows: "These BNSF trains must be either I-5 Corridor or Central Corridor trains." Making this correction will restore the original and continuing intent of the parties that the Intermodal Train trackage rights it received over the Cal-P Line and the Elvas – Stockton Line are limited to trains to competing with UP for I-5 and Central Corridor Route intermodal traffic.

VERIFICATION

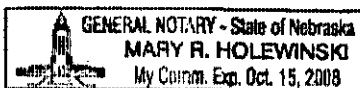
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)
COUNTY OF DOUGLAS)

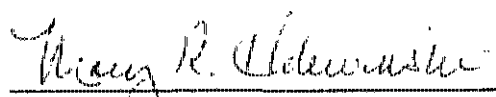
I JOHN H. REBENS DORF, being duly sworn, state that I have read the foregoing statement, that I know its contents, and that those contents are true as stated.



JOHN H. REBENS DORF

SUBSCRIBED AND SWORN TO before me this 16 day of February, 2007.





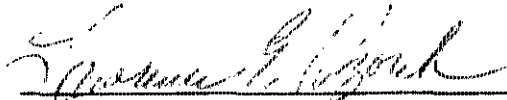
NOTARY PUBLIC

My Commission expires: October 15, 2008

VERIFICATION

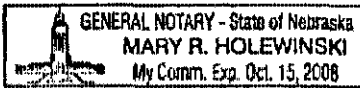
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COUNTY OF DOUGLAS)

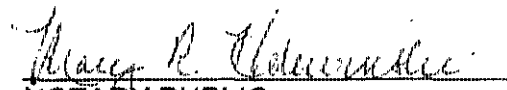
I, LAWRENCE E. WZOREK, being duly sworn, state that I have read the foregoing statement, that I know its contents, and that those contents are true as stated.



LAWRENCE E. WZOREK

SUBSCRIBED AND SWORN TO before me this 16 day of February, 2007.





NOTARY PUBLIC

My Commission expires: October 15, 2008



"Roper, Michael E" <Michael.Roper@bnsf.com> on 12/22/2000 11:02:05 AM

To: "Larry Wzorek (E-mail)" <lewzorek@notes.up.com>
 cc: "Rickershauser, Pete J" <Pete.Rickershauser@bnsf.com>, "Weicher, Richard E"
 <Richard.Weicher@bnsf.com>, "Bartoskewitz, Richard T" <Richard.Bartoskewitz@bnsf.com>,
 "Adrian Steel (E-mail)" <asteel@mayerbrown.com>

Subject: Amended and Restated Settlement Agreement

Larry:

We have drafted a Restated and Amended Settlement Agreement and it is enclosed for your review. The attachments below are a cover letter, a chart showing the principal changes, a clean version of the draft and a redline version of the draft.

After you and your team have reviewed the drafts, I hope we can get together to discuss any outstanding issues. I will be out of the office until January 4th. Hope you have a great Holiday Season.

<<1220wzorekltr.doc>> <<1222RestatedChart.doc>> <<1222RestatedAgr.doc>>
 <<1222redlinerevstated.doc>>

Mike
 352-2353

CONFIDENTIAL NOTICE --

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- 1222RestatedChart.doc



- 1222RestatedAgr.doc



- 1222redlinerevstated.doc

BNSF



MICHAEL E. ROPER
Senior General Attorney

**The Burlington Northern and
Santa Fe Railway Company**
2500 Lou Menk Drive
Fort Worth, Texas 76131-2828
(817) 352-2353 - Telephone
(817) 352-2397 - Fax
Michael.Roper@BNSF.com

LAW DEPT.

DEC 26 2000

7:11:00 PM

VIA EMAIL AND OVERNIGHT MAIL

December 22, 2000

L.E.W.

JAN 4 2001

Mr. Larry Wzorek
Assistant Vice President-Law
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Re: Restated and Amended Settlement Agreement

Dear Larry:

As you know, we have discussed on several occasions the need to draft a restated and amended Settlement Agreement to reflect the changes that have occurred since the Board issued its decision in the UP/SP merger proceeding. In the interest of moving that process along, we have undertaken to draft a restated and amended Settlement Agreement. Attached is a clean redraft as well as a red-lined version which hopefully contains all of the changes which have occurred since the first and second supplements to the original Settlement Agreement dated September 25, 1995, including Decision No. 44. We have also included certain changes not based on any particular decision but which we believe are necessary to fulfill the Board's condition that BNSF provide fully competitive service to customers. In order to facilitate review of the documents, I am also attaching a chart showing the principal sections which have been changed and a brief description of the modifications.

Once you and your team have had the opportunity to review the documents, I suggest we get together after the first of the year to discuss the proposed changes.

Sincerely,

Michael E. Roper

MER/tmm

cc: P. J. Rickershauser w/o encl.
R. E. Weicher w/o encl.
R. T. Bartoskewitz w/o encl.

12/21/00

Amendments to BNSF Settlement Agreement¹

Section(s)	Amendments
Definitions	Added definition of "2-to-1" customer facilities
Definitions	Added definition of "new customer facilities"
Definitions	Added definition of "Trackage Rights Line"
Definitions	Added definition of "on" a trackage rights line
Definitions	Added definition of "transload facilities"
Definitions	Added definition of "new transload facility"
1a	Added BNSF trackage rights on SP line between Salt Lake City and Ogden to serve "2-to-1" customer facilities
1b, 3c, 4b, 5b and 6c	Added language in subparagraph (ii) providing BNSF with access to existing and future transload facilities on trackage rights lines and in subparagraph (iv) providing BNSF with access to new facilities on all trackage rights lines and not just former SP lines
1b	Added BNSF interchange rights with Salt Lake City Southern Railroad
1b	Clarified that either party can seek STB review of "2-to-1" shipper and new facilities (including transload) disputes
1c, 3d, 4c, 5c and 6d	Clarified that BNSF access to new facilities on trackage rights lines can be via direct service, reciprocal switch, or (with UP's agreement) haulage or third party contractor
1d, 3h, 4d, 5d and 6e	Conformed language to corresponding preceding sections
4a	Added BNSF trackage rights to CPSB Elmendorf plant
4a	Added BNSF trackage rights between Round Rock and McNeil for interchange with CMTA operator

^{1/} The amendments identified in this chart are in addition to those made by the First and Second Supplements to the original September 25, 1995 BNSF Settlement Agreement.

Section(s)	Amendments
4b	Changed CMTA operator interchange to McNeil rather than Elgin
5a	Included reference to Term Sheet Agreement
5b	Removed CMA Agreement restrictions on BNSF access to Lake Charles area shippers
5b	Added language providing for BNSF access to Rose Bluff, LA and for BNSF interchange with Acadiana Railway and Louisiana & Delta Railroad
5g	Deleted provision concerning sale of SP's line between Iowa Junction and Avondale to BNSF
6a	Added language to implement Entergy build-in/build-out condition
6c	Added language to implement (i) BNSF right to interchange Lake Charles area traffic with KCS at Shreveport and Texarkana and (ii) TUE access condition
8i	Clarified that the parties' intention is to preserve competition not only for "2-to-1" customers but also all other customers who are beneficiaries of STB's merger conditions and to enable BNSF to provide competitive service to such customers
8i	Clarified that BNSF has access to not only "2-to-1" shippers at omnibus points but also new facilities and existing and future transloads at such points
8i	Defined "2-to-1" point for purposes of existing transload condition
8i	Added BNSF right to interchange with short-lines establishing a new post-merger interchange on a trackage rights line
8j	Added expanded CMA Agreement build-in/build-out condition and clarified that either party can seek STB review of "technical" build-in/build-out disputes
8m	Added language to provide that UP is required to provide notice to BNSF and the customer when it determines not to renew a lease and that UP is required to either renew the lease (for the remaining term of any contract between BNSF and the customer) or make comparable property available for the location of the customer's facility with no net increase in costs
8n	Added language to provide BNSF with right to use team tracks at "2-to-1" and omnibus points
8o	Incorporated CMA Agreement
9d	Added language incorporating dispatching protocols
9d	Added Houston "clear route" language

Section(s)	Amendments
9d	Added language providing for a right of first refusal in the event a joint trackage line and/or associated facility is to be sold or retired
9g	Clarified that switching limits for purposes of determining BNSF access are the publicly-available switching limits in effect on 9/25/95
9g	Added language specifically providing that BNSF has the right to build yards, terminals and other facilities to support its trackage rights operations
9i	Added BNSF equal access to SP Gulf Coast SIT facilities
9m	Added directional operations provision

Draft: 12/21/00

RESTATED AND AMENDED AGREEMENT

This Restated and Amended Agreement ("Agreement") is entered into this ____ day of December, 2000, between UNION PACIFIC RAILROAD COMPANY ("UP"), a Delaware corporation, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF"), a Delaware corporation.

WITNESSETH:

WHEREAS, UP and BNSF entered into an agreement dated September 25, 1995, as amended by supplemental agreements dated November 18, 1995, and June 27, 1996 (collectively, the "1995 Agreement"), in connection with UP's acquisition of Southern Pacific Rail Corporation and its affiliates ("SP") in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company;

WHEREAS, the Surface Transportation Board approved the common control and merger of UP and SP in Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and in so doing imposed certain conditions on UP and SP, including, as modified by the Surface Transportation Board, the April 18, 1996 settlement agreement between UP, BNSF and the Chemical Manufacturers Association (the "CMA Agreement");

f) Except as hereinafter provided, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

g) On SP's line between Weso and Oakland via the "Cal-P," BNSF shall be entitled to move only (i) intermodal trains moving between Oakland and Weso and points east or Keddie and points north, and (ii) one manifest train/day in each direction. Intermodal trains are comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration. Manifest trains shall be carload business and shall be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP trains. Helpers shall not be used unless comparable UP/SP manifest trains use helpers in which case BNSF trains may be operated in the same fashion provided that BNSF furnishes the necessary helper service. BNSF may also utilize the "Cal-P" for one manifest train per day moving to or from Oakland via Keddie and Bieber; provided, however, that BNSF may only operate one manifest train/day in each direction via the "Cal-P" regardless of where the train originates or terminates. The requirement to use helpers does not apply to movement over the "Cal-P."

h) At BNSF's request, UP/SP shall provide train and engine crews and required support personnel and services in accordance with UP/SP's operating practices necessary to handle BNSF trains moving between Salt Lake City and Oakland. UP/SP shall be reimbursed for providing such employees on a cost plus reasonable additives basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense. BNSF must also give UP/SP reasonable advance notice of its need for employees in order to allow

RESTATED AND AMENDED AGREEMENT

(original BNSF Settlement Agreement as modified
by First and Second Supplements)

This ~~This Restated and Amended~~ Agreement ("Agreement") is entered into this 25th day of
day of December, 2000, between UNION PACIFIC RAILROAD COMPANY
("UP"), a Delaware corporation, and THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY ("BNSF"), a Delaware corporation.

WITNESSETH:

WHEREAS, UP and BNSF entered into an agreement dated September, 1995,
between 25, 1995, as amended by supplemental agreements dated November 18, 1995, and
June 27, 1996 (collectively, the "1995 Agreement"), in connection with UP's acquisition of
Southern Pacific Rail Corporation and its affiliates ("SP") in Finance Docket No. 32760,
Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad
Company (collectively referred to as "UP"), and -- Control and Merger -- Southern Pacific Rail
Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western
Railroad Company, St. Louis Southwestern Railway Company and SPCSI Corp. (collectively
referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on
the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka

written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks (or such other intermodal ramp as UP may in the future use for its Reno area intermodal traffic) with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of this facility is required to accommodate the combined needs of UP/SP and BNSF, then the parties shall share in the cost of such expansion on a pro rata basis allocated on the basis of the relative number of lifts for each party in the 12-month period preceding the date construction begins.

f) Except as hereinafter provided, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

g) On SP's line between Weso and Oakland via the "Cal-P," BNSF shall be entitled to move only (i) intermodal trains moving between ~~(x) Oakland and~~ Weso and points east or Keddie and points north ~~and (y) Oakland,~~ and (ii) one manifest train/day in each direction. Intermodal trains are comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration. Manifest trains shall be carload business and shall be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP trains. Helpers shall not be used unless comparable UP/SP manifest trains use helpers in which case BNSF trains may be operated in the same fashion provided that BNSF furnishes the necessary helper service. BNSF may also utilize


the "Cal-P" for one manifest train per day moving to or from Oakland via Keddie and Bieber; provided, however, that BNSF may only operate one manifest train/day in each direction via the "Cal-P" regardless of where the train originates or terminates. The requirement to use helpers does not apply to movement over the "Cal-P."

h) At BNSF's BNSF's request, UP/SP shall provide train and engine crews and required support personnel and services in accordance with UP/SP's operating practices necessary to handle BNSF trains moving between Salt Lake City and Oakland. UP/SP shall be reimbursed for providing such employees on a cost plus reasonable additives basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense. BNSF must also give UP/SP reasonable advance notice of its need for employees in order to allow UP/SP time to have adequate trained crews available. All UP/SP employees engaged in or connected with the operation of BNSF's trains shall, solely for purposes of standard joint facility liability, be deemed to be "sole employees" of BNSF. If UP/SP adds to its labor force to comply with a request or requests from BNSF to provide employees, then BNSF shall be responsible for any labor protection, guarantees or reserve board payments for such incremental employees resulting from any change in BNSF operations or traffic levels.

i) UP/SP agree that their affiliate Central California Traction Company shall be managed and operated so as to provide BNSF non-discriminatory access to industries on its line on the same and no less favorable basis as provided UP and SP.

j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF if UP/SP subsequently

ATTACHMENT II

From: Larry E. Wzorek on 05/05/2001 01:44 PM
To: "Steel Jr., Adrian L." <ASSteel@mayerbrown.com> @ INTERNET
cc: John Rebensdorf@UP, John T. Gray@UP, Jerry Wilmoth@UP, John H. Ransom@UP, William G. Barr@UP, Mike Hemmer/Covington@COVINGTON @ COVNET @ UP_NET1
Subject: UP Proposed Inserts to Settlement Agreement 

Adrian,

Attached is a Word document that has the inserts to the Revised Settlement Agreement which UP said at our May 2nd meeting that we would prepare for the next draft. Unfortunately, I have not had the opportunity to review this wording with each member of our team so I am providing this to you with the caution that it is still subject to further review here. However, I decided to forward these inserts now to facilitate the preparation and circulation of the next draft.

I will be out of the office on business beginning late Monday afternoon. So please be sure to copy Bill Barr on any notes to me. Bill and I will coordinate gathering comments on the next draft. Thanks.

Larry



05 05 01 UP Proposed Inserts.d

UP PROPOSED INSERTS TO BNSF / UP SETTLEMENT AGREEMENT

Insert Section 1 (b) [in lieu of trackage rights over DRGW line]

[At the end of the section 1 (b) insert the following]

BNSF shall have the same access as UP to all "2-to-1" Shipper Facilities between Salt Lake City, UT, and Ogden, UT, whether such access is via the UP line or the SP line.

Insert Section 1 (g)

(g) On SP's line over Donner Pass between Weso and Elvas and between Elvas and Oakland via the "Cal-P," BNSF shall be entitled to move only (i) intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one manifest train/day in each direction. Intermodal trains are comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration. Manifest trains shall be carload business and shall be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP trains. Helpers shall not be used unless comparable UP/SP manifest trains use helpers in which case BNSF trains may be operated in the same fashion provided that BNSF furnishes the necessary helper service. BNSF may also utilize the "Cal-P" for one manifest train per day moving to or from Oakland via Keddie and Bieber; PROVIDED, HOWEVER, that BNSF may operate only one manifest train per day in each direction over the "Cal-P" regardless of where the train originates or terminates. The requirement to use helpers does not apply to movement over the "Cal-P" between Elvas and Oakland.

Alternative Section 1 (g) which uses less of the existing language:

(g) BNSF may operate only the following trains on SP's "Cal-P" line between Sacramento and Oakland: (i) intermodal and automotive trains composed of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration and (ii) one manifest train of carload business per day in each direction. These BNSF manifest trains may be either I-5 corridor or central corridor trains. On the Donner Pass line between Sacramento and Weso, BNSF may operate only intermodal and automotive trains as described in clause (i) and one manifest train of carload business per day in each direction. The manifest trains must be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP manifest trains. BNSF may use helpers on these trains only if comparable UP/SP manifest trains use helpers; BNSF must provide the helper service.

Insert Section 9 (g) [Language from other BNSF/UP agreement]

(g) Either party shall have the right to construct, or have constructed for it, for its sole use exclusively owned or leased facilities, including, without limitation, automobile and intermodal facilities, along the Joint Trackage pursuant to the following terms and conditions:

(1) The party wishing to construct such exclusively owned facilities for its sole use shall submit its plans to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed;

(2) Such exclusively owned or leased and used facilities shall not (i) impair the other party's use of the Joint Trackage, (ii) prevent or unduly hinder the other party's access to existing or future customers or facilities served from the Joint Trackage, or (iii) impair access to other exclusively owned facilities then in existence; and

(3) If jointly owned or leased and used property is to be used for the construction of such exclusively owned or leased and used facilities, the party so constructing such exclusively owned or leased and used facilities shall reimburse the other party for its ownership of the jointly owned property so utilized at 50% of its then current fair market value, except for properties identified in Exhibit "C".

Insert Section 9 (m)

(m) In the event UP/SP institute directional operations over any Trackage Rights Line, (i) UP/SP shall provide BNSF with reasonable notice of the planned institution of such operations and shall adjust, as appropriate, the trackage rights granted to BNSF pursuant to this Agreement, and (ii) BNSF shall operate in accordance with the flow of traffic established by such directional operation; PROVIDED, HOWEVER, that (1) BNSF's right to use any line over which BNSF is granted Overhead Trackage Rights as a result of UP/SP's institution of directional operations shall be limited to overhead rights only, and BNSF shall not have the right to serve, by build-in, build-out or otherwise, any shipper facility or Transload Facility now or in the future located on such line, and (2) BNSF shall have the right, on any directional line, to operate against the flow of traffic if UP is regularly operating a significant number of its through trains against the flow of traffic on the same directional line.

CERTIFICATE OF SERVICE

I, William G. Barr, certify that, on this 16th day of February, 2007, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery, on the parties listed on Exhibit A, attached hereto.

A handwritten signature in black ink, appearing to read "William G. Barr", written over a horizontal line.

William G. Barr

Roger Nober
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131-0039

Port of Oakland
Attn: Director of Maritime
530 Waver Street
Oakland, CA 94607

California Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

City of Martinez
525 Henrietta Street
Martinez, CA 94553-2394

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BNSF Railway Company
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National Railroad Passenger Corporation
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Richmond City Hall
1401 Marina Way South
Richmond, CA 94804

California Department of Transportation
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Sacramento, CA 94273-0001

The Capitol Corridor Joint Powers Authority
300 Lakeside Drive
14th Floor, East
Oakland, CA 94612